

RESOLUTION NO. 2016-16

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SELECTING CALVIN, GIORDANO & ASSOCIATES, INC., THE CORRADINO GROUP, AND EAC CONSULTING, INC. FOR CONTINUING PROFESSIONAL SERVICES; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Key Biscayne (“Village”) issued Request for Qualifications No. 2016-02-09 for continuing professional services relating to general civil engineering, transportation planning and engineering, environmental engineering, and landscape architecture (the “Services”); and

WHEREAS, on April 26, 2016, the Village Council heard oral presentations from the short listed firms and ranked Calvin, Giordano & Associates, Inc., the Corradino Group, and EAC Consulting, Inc. (the “Consultants”) as the most qualified firms for the Services; and

WHEREAS, the Consultants have proposed the hourly rates that they will charge for the Services as provided in Exhibit “A” to this Resolution (the “Proposals”); and

WHEREAS, the Village Council desires to enter into agreements with the Consultants for the Services consistent with the Proposals; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That each of the recitals stated above is hereby adopted and confirmed.

Section 2. **Selection Approved.** The Village Council hereby selects the Consultants for the Services.

Section 3. **Village Manager Authorized.** The Village Manager is hereby authorized to execute agreements with the Consultants consistent with the Proposals, subject to final approval as to form, content, and legal sufficiency by the Village Attorney.

Section 4. **Effective Date.** That this Resolution shall be effective immediately upon adoption hereof.

PASSED AND ADOPTED this 24th day of May, 2016.


MAYOR MAYRA PEÑA LINDSAY

ATTEST:



CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY



VILLAGE ATTORNEY



Exhibit “A”

PROFESSIONAL SERVICES COMPARISON: HOURLY RATES			
	CALVIN GIORDANO	CORRADINO	EAC
Principal	\$215.00	\$224.37	\$202.00
Project Manager	\$175.00	\$210.57	\$150.00 - \$195.00
General Engineering	\$130.00 - \$175.00	\$130.35 - \$156.45	\$105.00 - \$165.00
Surveying	\$130.00 - \$175.00	\$114.00 - \$139.59	\$90.00 - \$125.00
Construction Management	\$90.00 - \$175.00	\$78.00 - \$216.00	\$90.00 - \$125.00
Geotechnical Engineering	\$125.00 - \$150.00	\$62.00 - \$185.00	\$80.00 - \$125.00
Landscape Architecture	\$120.00 - \$165.00	\$50.00 - \$175.00	\$100.00 - \$175.00
Environmental	\$105.00 - \$125.00	\$110.00 - \$175.00	\$100.00 - \$150.00
Coastal Engineering	\$130.00 - \$250.00	\$85.00 - \$200.00	\$105.00 - \$165.00
Transportation Planning/Engineering	\$130.00 - \$175.00	\$82.77 - \$156.45	\$105.00 - \$165.00
Traffic Data Collection and Traffic Engineering	\$125.00 - \$176.55	\$119.01	\$100.00 - \$150.00
<i>If additional services are required, the Village will negotiate the fees with the Consultant.</i>			

CONTINUING PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE VILLAGE OF KEY BISCAYNE

AND

CALVIN, GIORDANO & ASSOCIATES, INC.

May **THIS AGREEMENT** (this "Agreement") is made effective as of the *25th* day of **MAY**, 2016 (the "Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation, whose principal address is 88 West McIntyre Street, Key Biscayne, Florida 33149 (hereinafter the "Village"), and **CALVIN, GIORDANO & ASSOCIATES, INC.**, a Florida corporation, whose principal address is 1800 Eller Drive, Suite 600, Fort Lauderdale, Florida 33316 (hereinafter the "Consultant").

WHEREAS, in response to the Village's Request for Qualifications (RFQ) No. 2016-02-09, Contractor submitted a proposal for the Services (as hereinafter defined);

WHEREAS, the Consultant will perform general civil engineering, transportation planning and engineering, environmental engineering and landscape architecture services for the Village, as further described on Exhibit "A" attached hereto, on an as-requested, per-project basis (the "Services"); and

WHEREAS, the Consultant and Village, through mutual negotiation, have agreed upon a rate schedule set forth Exhibit "B" (the "Rate Schedule") in connection with the Services; and

WHEREAS, the Village desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the Village agree as follows:

1. **Scope of Services.**

- 1.1. The Consultant shall furnish such the Services and provide deliverables for various projects for the Village (each a "Project") as requested by the Village and detailed in a "Statement of Work" which the Village will provide the Consultant when engaging the Consultant to work on a specific Project.
- 1.2. Prior to commencement of work on a Project, the Consultant will provide the City with fixed lump sum cost for the Services set forth in the Statement of Work calculated using the rates set forth on the Rate Schedule.

- 1.3. If the Village approves the fixed lump sum cost for the Project, the Village will provide the Consultant with a Notice to Proceed to perform the Services set forth in the Statement of Work. Consultant acknowledges that it shall not undertake to perform any Services on any Project until it has received from the Village the Notice to Proceed on such Project.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon the Effective Date and shall remain in effect for thirty six (36) months thereafter, unless earlier terminated in accordance with Paragraph 8. Additionally, this Agreement shall automatically renew for two additional one (1) year periods on the same terms as set forth herein unless either party provides the other party with written notification, at least ninety (90) days prior to the expiration of the then current term, that such party elects not to renew this Agreement.
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete the Services within the timeframes set forth in the Statement of Work and the Notice to Proceed for each Project in the manner provided in this Agreement, unless extended by the Village Manager.

3. **Compensation and Payment.**

- 3.1 Compensation for Services provided by Consultant shall be in accordance with the approved fixed lump sum set forth in the Statement of Work or the Notice to Proceed for such Project.
- 3.2 During each Project, Consultant shall deliver an invoice to Village no more often than once per month detailing the Services completed and the amount due to Consultant under the Statement of Work for such Project. Fees shall be paid in arrears each month, pursuant to Consultant's invoice, which shall be based upon the percentage of work completed for each Project. The Village shall pay the Consultant in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Village Manager.

4. **Subconsultants.**

- 4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to each Project.
- 4.2 Consultant may only utilize the services of a particular subconsultant with the prior written approval of the Village Manager, which approval may be granted or withheld in Village Manager's reasonable discretion.

5. **Village's Responsibilities**

- 5.1 Village shall make available any maps, plans existing studies, reports and other data pertinent to the Project and in possession of the Village.
- 5.2 Upon Consultant's request, Village shall reasonably cooperate in arranging for access to any real property as required for Consultant to perform the Services.

6. **Consultant's Responsibilities**

- 6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services for each Project as is ordinarily provided by a consultant under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Consultant's deliverables or services are incorrect, not properly rendered, defective, or fail to conform to the Services for each Project, upon written notification from the Village Manager, the Consultant shall at Consultant's sole expense, immediately correct its deliverables or Services.
- 6.2 The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Village as an independent contractor of the Village.

7. **Conflict of Interest.**

- 7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any adversarial issues in the Village. For the purposes of this section "adversarial" shall mean any development application where staff is recommending denial or denied an application, or an administrative appeal or court action wherein the Village is a party.

8. **Termination.**

- 8.1 Either party, without cause, may terminate this Agreement upon thirty (30) calendar days written notice to the other party. The Village may terminate this Agreement immediately with cause.
- 8.2 Upon receipt of written notice of termination from the Village, Consultant shall immediately stop work on the Project unless directed otherwise by the Village Manager.

- 8.3 The Consultant shall be paid for all work accepted by the Village Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.
- 8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the Project to the Village, in a hard copy and electronic format within seven (7) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

- 9.1 Consultant shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 9 and may be increased by the Village as it deems necessary or prudent.
- 9.2 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
- 9.3 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Consultant shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
- 9.4 Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without

restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

9.5 Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.

9.6 **Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing Services on any Project. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. The Consultant shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.

9.7 **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Consultant in performance of this Agreement. The Consultant's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Consultant's insurance. The Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.

9.8 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Consultant shall be

responsible for the payment of any deductible or self-insured retentions in the event of any claim.

9.9 The provisions of this section shall survive termination of this Agreement.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

12.1 Consultant shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Consultant's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Consultant's performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested,

or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Village: John C. Gilbert
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

With a copy to: Stephen J. Helfman, Esq.
Village Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134

For The Consultant: Shelley Eichner
Calvin, Giordano & Associates, Inc.
1800 Eller Drive, Suite 600
Fort Lauderdale, Florida 33316

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

15.3 Consultant represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

16. **Ownership and Access to Records and Audits.**

- 16.1 Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Consultant during the term of this Agreement (“Work Product”) belong to the Village. Consultant shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 16.2 Consultant agrees to keep and maintain public records in Consultant’s possession or control in connection with Consultant’s performance under this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- 16.4 Upon request from the Village’s custodian of public records, Consultant shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.5 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 16.6 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Consultant shall be delivered to the Village in a format that is compatible with the Village’s information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 16.7 Any compensation due to Consultant shall be withheld until all records are received as provided herein.

- 16.8 Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

Section 119.0701(2)(a), Florida Statutes

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records:	Conchita H. Alvarez, MMC
Mailing address:	Village Clerk 88 W. McIntyre St. Key Biscayne, FL 33149
Telephone number:	305 365 5506
Email:	calvarez@keybiscayne.fl.gov

17. **Nonassignability.**

- 17.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Consultant, and such firm's familiarity with the Village's area, circumstances and desires.

18. **Severability.**

- 18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

- 19.1 The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

21. **Waiver**

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

22.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition of Contingency Fees.**

23.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Public Entity Crimes Affidavit**

24.1 Consultant shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

25. **Counterparts**

25.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below their signatures.

CONSULTANT:

**CALVIN, GIORDANO & ASSOCIATES,
INC.,** a Florida corporation

By: Shelley Eichner
Name: Shelley Eichner
Title: Senior Vice President
Date Executed: 5-31-16

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

VILLAGE:

**VILLAGE OF KEY BISCAYNE, a
Florida municipal corporation**



Attest:


Conchita Alvarez, Village Clerk, MMC

By:


John C. Gilbert, Village Manager

Date Executed:

6/6/16

Approved as to Form and Legal Sufficiency:


Village Attorney

EXHIBIT "A"

DESCRIPTION OF SERVICES

The Consultants can expect to provide services including, but not limited to the tasks identified below:

1. **General Civil Engineering:**

Roadway, streetscape, sidewalks, public works inspections, parking lots, parking spaces and intersection design, capital improvement plan, feasibility and engineering studies, stormwater facility, design and management, specifications preparation, cost estimating; canal maintenance and design, engineering construction management and inspections, geotechnical services, and other miscellaneous professional services that the Village may desire.

2. **Transportation Planning and Engineering Services:**

Transportation planning and traffic engineering, traffic-impact and safety studies, parking studies; neighborhood traffic management; multi-modal traffic planning and design, Roadways/Transportation planning and design, bicycle and pedestrian paths design and integrated mobility options; traffic calming; collection of traffic counts and reports; signal timing analysis and warrant studies; signs and pavement markings and other miscellaneous professional services that the Village may desire.

3. **Environmental Engineering:**

Coastal engineering, construction, regulatory permitting, marine environmental, ecosystem restoration, regional sand management, and other miscellaneous professional services that the Village may desire.

4. **Landscape Architecture:**

Landscape, hardscape, and irrigation design; park facility master planning; park and recreational facilities design, bicycle and pedestrian path design; integration of parks, landscaped and open spaces and recreational facilities with the Village's residential and commercial districts and other miscellaneous professional services that the Village may desire.

EXHIBIT "B"
RATE SCHEDULE

Hourly Rates	
Principal	\$215.00
Project Manager	\$175.00
General Engineering	\$130.00-\$175.00
Surveying	\$130.00-\$175.00
Construction Management	\$90.00-\$175.00
Geotechnical Engineering	\$125.00-\$150.00
Landscape Architecture	\$120.00-\$165.00
Environmental Engineering	\$105.00-\$125.00
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<i>If additional services are required, the Village will negotiate fees with the Consultant</i>	

CONTINUING PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE VILLAGE OF KEY BISCAYNE

AND

THE CORRADINO GROUP, INC.

THIS AGREEMENT (this "Agreement") is made effective as of the 25th day of May, 2016 (the "Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation, whose principal address is 88 West McIntyre Street, Key Biscayne, Florida 33149 (hereinafter the "Village"), and **THE CORRADINO GROUP, INC.**, a Florida corporation, whose principal address is 4055 NW 97th Avenue, Miami, Florida 33178 (hereinafter the "Consultant").

WHEREAS, in response to the Village's Request for Qualifications (RFQ) No. 2016-02-09, Contractor submitted a proposal for the Services (as hereinafter defined);

WHEREAS, the Consultant will perform general civil engineering, transportation planning and engineering, environmental engineering and landscape architecture services for the Village, as further described on Exhibit "A" attached hereto, on an as-requested, per-project basis (the "Services"); and

WHEREAS, the Consultant and Village, through mutual negotiation, have agreed upon a rate schedule set forth Exhibit "B" (the "Rate Schedule") in connection with the Services; and

WHEREAS, the Village desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

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- 1.2. Prior to commencement of work on a Project, the Consultant will provide the City with fixed lump sum cost for the Services set forth in the Statement of Work calculated using the rates set forth on the Rate Schedule.

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- 8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the Project to the Village, in a hard copy and electronic format within seven (7) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

- 9.1 Consultant shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 9 and may be increased by the Village as it deems necessary or prudent.
- 9.2 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
- 9.3 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Consultant shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
- 9.4 Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without

restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

- 9.5 Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.
- 9.6 **Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing Services on any Project. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. The Consultant shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.
- 9.7 **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Consultant in performance of this Agreement. The Consultant's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Consultant's insurance. The Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- 9.8 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Consultant shall be

responsible for the payment of any deductible or self-insured retentions in the event of any claim.

9.9 The provisions of this section shall survive termination of this Agreement.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

12.1 Consultant shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Consultant's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Consultant's performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.


13. **Notices/Authorized Representatives.**

13.1 Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested,

or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Village: John C. Gilbert
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

With a copy to: Stephen J. Helfman, Esq.
Village Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de León Blvd., Suite 700
Coral Gables, Florida 33134

For The Consultant: 
The Corradino Group, Inc.
4055 NW 97th Avenue
Miami, Florida 33178

14. **Governing Law.**

14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

15. **Entire Agreement/Modification/Amendment.**

15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

15.3 Consultant represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

16. **Ownership and Access to Records and Audits.**

- 16.1 Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Consultant during the term of this Agreement ("Work Product") belong to the Village. Consultant shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 16.2 Consultant agrees to keep and maintain public records in Consultant's possession or control in connection with Consultant's performance under this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- 16.4 Upon request from the Village's custodian of public records, Consultant shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.5 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 16.6 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Consultant shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 16.7 Any compensation due to Consultant shall be withheld until all records are received as provided herein.

- 16.8 Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

Section 119.0701(2)(a), Florida Statutes

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records:	Conchita H. Alvarez, MMC
Mailing address:	Village Clerk 88 W. McIntyre St. Key Biscayne, FL 33149
Telephone number:	305 365 5506
Email:	calvarez@keybiscayne.fl.gov

17. **Nonassignability.**

- 17.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Consultant, and such firm's familiarity with the Village's area, circumstances and desires.

18. **Severability.**

- 18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

- 19.1 The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

21. **Waiver**

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

22.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition of Contingency Fees.**

23.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Public Entity Crimes Affidavit**

24.1 Consultant shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

25. **Counterparts**

25.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below their signatures.

CONSULTANT:

THE CORRADINO GROUP, INC., a
Florida corporation

By: Joseph M. Corradino
Name: Joseph M. Corradino
Title: President

Date Executed: 5/31/16

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

VILLAGE:

**VILLAGE OF KEY BISCAYNE, a
Florida municipal corporation**



Attest:


Conchita Alvarez, Village Clerk, **MMC**

By: 
John C. Gilbert, Village Manager

Date Executed: 6/6/16

Approved as to Form and Legal Sufficiency:


Village Attorney

EXHIBIT "A"
DESCRIPTION OF SERVICES

The Consultants can expect to provide services including, but not limited to the tasks identified below:

1. **General Civil Engineering:**

Roadway, streetscape, sidewalks, public works inspections, parking lots, parking spaces and intersection design, capital improvement plan, feasibility and engineering studies, stormwater facility, design and management, specifications preparation, cost estimating; canal maintenance and design, engineering construction management and inspections, geotechnical services, and other miscellaneous professional services that the Village may desire.

2. **Transportation Planning and Engineering Services:**

Transportation planning and traffic engineering, traffic-impact and safety studies, parking studies; neighborhood traffic management; multi-modal traffic planning and design, Roadways/Transportation planning and design, bicycle and pedestrian paths design and integrated mobility options; traffic calming; collection of traffic counts and reports; signal timing analysis and warrant studies; signs and pavement markings and other miscellaneous professional services that the Village may desire.

3. **Environmental Engineering:**

Coastal engineering, construction, regulatory permitting, marine environmental, ecosystem restoration, regional sand management, and other miscellaneous professional services that the Village may desire.

4. **Landscape Architecture:**

Landscape, hardscape, and irrigation design; park facility master planning; park and recreational facilities design, bicycle and pedestrian path design; integration of parks, landscaped and open spaces and recreational facilities with the Village's residential and commercial districts and other miscellaneous professional services that the Village may desire.

EXHIBIT "B"
RATE SCHEDULE

Hourly Rates	
Principal	\$224.37
Project Manager	\$210.57
General Engineering	\$130.35-\$156.45
Surveying	\$114.00-\$139.59
Construction Management	\$78.00-\$216.00
Geotechnical Engineering	\$62.00-\$185.00
Landscape Architecture	\$50.00-\$175.00
Environmental Engineering	\$110.00-\$175.00
Coastal Engineering	\$85.00-\$200.00
Traffic Planning/Engineering	\$82.77-\$156.45
Traffic Data Collection and Traffic Engineering	\$119.01
<i>If additional services are required, the Village will negotiate fees with the Consultant</i>	

CONTINUING PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE VILLAGE OF KEY BISCAYNE

AND

EAC CONSULTING, INC.

May **THIS AGREEMENT** (this "Agreement") is made effective as of the *20th* day of *May*, 2016 (the "Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE, FLORIDA**, a Florida municipal corporation, whose principal address is 88 West McIntyre Street, Key Biscayne, Florida 33149 (hereinafter the "Village"), and **EAC CONSULTING, INC.**, a Florida corporation, whose principal address is 815 N.W. 57 Avenue, Suite 402, Miami, Florida 33126 (hereinafter the "Consultant").

WHEREAS, in response to the Village's Request for Qualifications (RFQ) No. 2016-02-09, Contractor submitted a proposal for the Services (as hereinafter defined);

WHEREAS, the Consultant will perform general civil engineering, transportation planning and engineering, environmental engineering and landscape architecture services for the Village, as further described on Exhibit "A" attached hereto, on an as-requested, per-project basis (the "Services"); and

WHEREAS, the Consultant and Village, through mutual negotiation, have agreed upon a rate schedule set forth Exhibit "B" (the "Rate Schedule") in connection with the Services; and

WHEREAS, the Village desires to engage the Consultant to perform the Services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the Village agree as follows:

1. **Scope of Services.**

- 1.1. The Consultant shall furnish such the Services and provide deliverables for various projects for the Village (each a "Project") as requested by the Village and detailed in a "Statement of Work" which the Village will provide the Consultant when engaging the Consultant to work on a specific Project.
- 1.2. Prior to commencement of work on a Project, the Consultant will provide the City with fixed lump sum cost for the Services set forth in the Statement of Work calculated using the rates set forth on the Rate Schedule.

- 1.3. If the Village approves the fixed lump sum cost for the Project, the Village will provide the Consultant with a Notice to Proceed to perform the Services set forth in the Statement of Work. Consultant acknowledges that it shall not undertake to perform any Services on any Project until it has received from the Village the Notice to Proceed on such Project.

2. **Term/Commencement Date.**

- 2.1 This Agreement shall become effective upon the Effective Date and shall remain in effect for thirty six (36) months thereafter, unless earlier terminated in accordance with Paragraph 8. Additionally, this Agreement shall automatically renew for two additional one (1) year periods on the same terms as set forth herein unless either party provides the other party with written notification, at least ninety (90) days prior to the expiration of the then current term, that such party elects not to renew this Agreement.
- 2.2 Consultant agrees that time is of the essence and Consultant shall complete the Services within the timeframes set forth in the Statement of Work and the Notice to Proceed for each Project in the manner provided in this Agreement, unless extended by the Village Manager.

3. **Compensation and Payment.**

- 3.1 Compensation for Services provided by Consultant shall be in accordance with the approved fixed lump sum set forth in the Statement of Work or the Notice to Proceed for such Project.
- 3.2 During each Project, Consultant shall deliver an invoice to Village no more often than once per month detailing the Services completed and the amount due to Consultant under the Statement of Work for such Project. Fees shall be paid in arrears each month, pursuant to Consultant's invoice, which shall be based upon the percentage of work completed for each Project. The Village shall pay the Consultant in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Village Manager.

4. **Subconsultants.**

- 4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to each Project.
- 4.2 Consultant may only utilize the services of a particular subconsultant with the prior written approval of the Village Manager, which approval may be granted or withheld in Village Manager's reasonable discretion.

5. **Village's Responsibilities**

- 5.1 Village shall make available any maps, plans, existing studies, reports and other data pertinent to the Project and in possession of the Village.
- 5.2 Upon Consultant's request, Village shall reasonably cooperate in arranging for access to any real property as required for Consultant to perform the Services.

6. **Consultant's Responsibilities**

- 6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services for each Project as is ordinarily provided by a consultant under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of this Agreement, it is determined that the Consultant's deliverables or services are incorrect, not properly rendered, defective, or fail to conform to the Services for each Project, upon written notification from the Village Manager, the Consultant shall at Consultant's sole expense, immediately correct its deliverables or Services.
- 6.2 The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Village as an independent contractor of the Village.

7. **Conflict of Interest.**

- 7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any adversarial issues in the Village. For the purposes of this section "adversarial" shall mean any development application where staff is recommending denial or denied an application, or an administrative appeal or court action wherein the Village is a party.

8. **Termination.**

- 8.1 Either party, without cause, may terminate this Agreement upon thirty (30) calendar days written notice to the other party. The Village may terminate this Agreement immediately with cause.
- 8.2 Upon receipt of written notice of termination from the Village, Consultant shall immediately stop work on the Project unless directed otherwise by the Village Manager.

- 8.3 The Consultant shall be paid for all work accepted by the Village Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.
- 8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, maps, and data pertaining to the Services and the Project to the Village, in a hard copy and electronic format within seven (7) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Insurance.**

- 9.1 Consultant shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified below as satisfactory to Village, naming the Village as an Additional Insured, underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Consultant's insurance and shall not contribute to the Consultant's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section 9 and may be increased by the Village as it deems necessary or prudent.
- 9.2 Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Consultant. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
- 9.3 Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Consultant shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
- 9.4 Business Automobile Liability with minimum limits of \$1,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without

restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.

- 9.5 Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.
- 9.6 **Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured (except with respect to Professional Liability Insurance and Worker's Compensation Insurance), no later than ten (10) days after award of this Agreement and prior to the execution of this Agreement by Village and prior to commencing Services on any Project. Each certificate shall include no less than (30) thirty-day advance written notice to Village prior to cancellation, termination, or material alteration of said policies or insurance. The Consultant shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.
- 9.7 **Additional Insured.** Except with respect to Professional Liability Insurance and Worker's Compensation Insurance, the Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Consultant in performance of this Agreement. The Consultant's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Consultant's insurance. The Consultant's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- 9.8 **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Consultant shall be

responsible for the payment of any deductible or self-insured retentions in the event of any claim.

9.9 The provisions of this section shall survive termination of this Agreement.

10. **Nondiscrimination.**

10.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

11. **Attorneys Fees and Waiver of Jury Trial.**

11.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

11.2 In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

12. **Indemnification.**

12.1 Consultant shall indemnify and hold harmless the Village, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from Consultant's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Village for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising from Consultant's performance or non-performance of this Agreement.

12.2 The provisions of this section shall survive termination of this Agreement.

13. **Notices/Authorized Representatives.**

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or by a private postal service, addressed to the parties (or their successors) at the following addresses:

For the Village: John C. Gilbert
Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

With a copy to: Stephen J. Helfman, Esq.
Village Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134

For The Consultant: Michael Adeife
EAC Consulting, Inc.
815 N.W. 57 Avenue, Suite 402
Miami, Florida 33126

14. **Governing Law.**

- 14.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

15. **Entire Agreement/Modification/Amendment.**

- 15.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 15.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.
- 15.3 Consultant represents that is an entity validly existing and in good standing under the laws of Florida. The execution, delivery and performance of this Agreement by Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

16. **Ownership and Access to Records and Audits.**

- 16.1 Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether patentable or not) which relate to Services to the Village which are conceived, developed or made by Consultant during the term of this Agreement ("Work Product") belong to the Village. Consultant shall promptly disclose such Work Product to the Village and perform all actions reasonably requested by the Village (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).
- 16.2 Consultant agrees to keep and maintain public records in Consultant's possession or control in connection with Consultant's performance under this Agreement. Consultant additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Consultant shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- 16.4 Upon request from the Village's custodian of public records, Consultant shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 16.5 Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 16.6 Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Consultant shall be delivered by the Consultant to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Consultant shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Consultant shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 16.7 Any compensation due to Consultant shall be withheld until all records are received as provided herein.

- 16.8 Consultant's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

Section 119.0701(2)(a), Florida Statutes

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records:	Conchita H. Alvarez, MMC
Mailing address:	Village Clerk 88 W. McIntyre St. Key Biscayne, FL 33149
Telephone number:	305 365 5506
Email:	calvarez@keybiscayne.fl.gov

17. **Nonassignability.**

- 17.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the Village Manager. The Village is relying upon the apparent qualifications and expertise of the Consultant, and such firm's familiarity with the Village's area, circumstances and desires.

18. **Severability.**

- 18.1 If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

19. **Independent Contractor.**

- 19.1 The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Village with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

20. **Compliance with Laws.**

20.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all required permits from all jurisdictional agencies to perform the Services under this Agreement at its own expense.

21. **Waiver**

21.1 The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

22. **Survival of Provisions**

22.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

23. **Prohibition of Contingency Fees.**

23.1 The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

24. **Public Entity Crimes Affidavit**

24.1 Consultant shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

25. **Counterparts**


25.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date written below their signatures.

CONSULTANT:

EAC CONSULTING, INC., a Florida corporation

By: 
Name: Michael Adeife
Title: Vice President

Date Executed: June 1, 2016

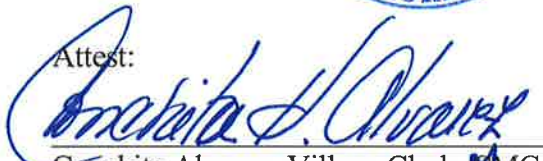
IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

VILLAGE:

**VILLAGE OF KEY BISCAYNE, a
Florida municipal corporation**



Attest:


Conchita Alvarez, Village Clerk, MMC

By: 
John C. Gilbert, Village Manager

Date Executed: 6/6/16

Approved as to Form and Legal Sufficiency:


Village Attorney

EXHIBIT "A"
DESCRIPTION OF SERVICES

The Consultants can expect to provide services including, but not limited to the tasks identified below:

1. **General Civil Engineering:**

Roadway, streetscape, sidewalks, public works inspections, parking lots, parking spaces and intersection design, capital improvement plan, feasibility and engineering studies, stormwater facility, design and management, specifications preparation, cost estimating; canal maintenance and design, engineering construction management and inspections, geotechnical services, and other miscellaneous professional services that the Village may desire.

2. **Transportation Planning and Engineering Services:**

Transportation planning and traffic engineering, traffic-impact and safety studies, parking studies; neighborhood traffic management; multi-modal traffic planning and design, Roadways/Transportation planning and design, bicycle and pedestrian paths design and integrated mobility options; traffic calming; collection of traffic counts and reports; signal timing analysis and warrant studies; signs and pavement markings and other miscellaneous professional services that the Village may desire.

3. **Environmental Engineering:**

Coastal engineering, construction, regulatory permitting, marine environmental, ecosystem restoration, regional sand management, and other miscellaneous professional services that the Village may desire.

4. **Landscape Architecture:**

Landscape, hardscape, and irrigation design; park facility master planning; park and recreational facilities design, bicycle and pedestrian path design; integration of parks, landscaped and open spaces and recreational facilities with the Village's residential and commercial districts and other miscellaneous professional services that the Village may desire.

**EXHIBIT “B”
RATE SCHEDULE**

Hourly Rates	
Principal	\$202.00
Project Manager	\$150.00-\$195.00
General Engineering	\$105.00-\$165.00
Surveying	\$90.00-\$125.00
Construction Management	\$90.00-\$125.00
Geotechnical Engineering	\$80.00-\$125.00
Landscape Architecture	\$100.00-\$175.00
Environmental Engineering	\$100.00-\$150.00
Coastal Engineering	\$105.00-\$165.00
Traffic Planning/Engineering	\$105.00-\$165.00
Traffic Data Collection and Traffic Engineering	\$100.00-\$150.00
<i>If additional services are required, the Village will negotiate fees with the Consultant</i>	